## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

METROPOLITAN REGIONAL COUNCIL OF CARPENTERS SOUTHEASTERN PENNSYLVANIA, STATE OF DELAWARE, AND EASTERN SHORE OF MARYLAND, AND ITS AFFILIATED LOCAL, CARPENTERS UNION LOCAL 2012

Respondents,

and

FORCINE CONCRETE & CONSTRUCTION CO., INC.

Charging Party.

Case No.: 4-CB-10520

## CHARGING PARTY'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for Charging Party, Forcine Concrete & Construction Co., Inc. ("Charging Party" or "Forcine"), raises the following exceptions to the Decision issued on May 18, 2011 by Administrative Law Judge Arthur J. Amchan ("ALJ").

**Exception 1**: Forcine excepts to the ALJ's holding that "Forcine's employees were not exercising any right guaranteed by Section 7 of the Act" when the Union's agents entered the Rydal Park jobsite on June 4, 2010 and "interrogated them about their immigration status and other matters." (Decision at p. 4, ll. 10-12, 17-18.) The ALJ specifically found that the Union "prevented the Forcine employees from working while they were questioning them" (Decision at p. 3, 1. 18), and the Board has long held that union conduct which prevents or obstructs employees from working, even for a short period of time, violates their Section 7 rights.

Exception 2: Forcine excepts to the ALJ's holding that "Section 7 is not so broad as to protect simply working in situations in which the employee is not confronted with a choice between engaging in protected activity or not," and that the Union's conduct "did not present Forcine's employees with a choice between engaging in protected activity or not." (Decision at p. 4, Il. 17-23, and p. 5, Il. 15-17.) Neither Section 7 nor Board law contain any such "choice" requirement, and Forcine is not aware of Board law requiring that employees prevented from working by union conduct must know that the persons preventing them from working are actually affiliated with a union, or know specific Section 7 rights from which they are refraining. Moreover, the Union agents, during the course of their salting campaign against Forcine and in furtherance of the Union's unfair labor practice charge filed against Forcine, deliberately concealed their identity and impersonated law enforcement officers to extract information from the employees, thereby precluding the employees from making an affirmative choice either way.

Exception 3: Forcine excepts to the ALJ's finding that the Union's "interrogations of Forcine's employees could only have been calculated to discourage them from working for Forcine and had a reasonable tendency to do so." (Decision at p. 5, ll. 12-13.) While Forcine agrees that the Union's interrogations and videotaping of its employees was partially intended to discourage them from continuing to work for Forcine (a non-union employer), the ALJ's finding ignores the stipulated facts and witness testimony establishing that the Union also engaged in this conduct with the specific intent of obtaining "evidence" for submission to the NLRB and broader public dissemination in support of its salting campaign and related unfair labor practice charge.

**Exception 4**: Forcine excepts to the ALJ's failure to hold that the Union violated Section 8(b)(1)(A) of the Act through its conduct on June 4, 2010 of coercing and restraining Forcine's employees from exercising their Section 7 rights. (Decision at p. 5, ll. 40-42, and p. 6, ll. 4-5.)

The grounds for this exception are based on the Union agents' entry onto the private and fenced in Rydal Park jobsite without permission, deliberate concealment of their identity and impersonation of law enforcement officials, interrogations of Forcine's employees in an intimidating and bullying manner, videotaping the interrogations without permission and without providing a reason, threatening Forcine's employees if they failed to produce work authorization papers, and threatening a manager in front of the employees when he asked for their identification.

Exception 5: Forcine excepts to the ALJ's holding that "the Union did not violate Section 8(b)(1)(A) by the posting of the edited version of the DVD on You Tube (sic) and by Local 2012 linking the You Tube (sic) posting its webpage," on the grounds that, "as with the interrogation itself, the postings on You Tube (sic) and Facebook did not present employees with a choice" of whether to engage in protected activity, *i.e.*, whether to support the Union in its salting campaign, unfair labor practice charge, or labor dispute against Forcine. (Decision at p. 5, ll. 19-36.) The ALJ's conclusion relies on his own erroneous interpretation of Section 7, as set forth in Exceptions 2 and 3, and ignores contrary Board precedent.

**Exception 6**: Forcine excepts to the ALJ's failure to hold that the Union's and Local 2012's posting the edited video to YouTube, violates Section 8(b)(1)(A) by restraining and coercing Forcine's employees from engaging in protected Section 7 activity. (Decision at 5, ll. 19-36.) The grounds for this exception are based on the ALJ's findings that Forcine's employees were likely to learn about and view the video, and would be coerced from continuing employment with Forcine or working for other non-union contractors (Decision at p. 5, ll. 19-27), and governing Board precedent.

Forcine relies upon, and incorporates fully as if set forth herein, the accompanying brief in further support of its exceptions to the ALJ's Decision.

Respectfully submitted,

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Dated: June 15, 2011

## **CERTIFICATE OF SERVICE**

I, Melissa Angeline, Esquire, hereby certify that on this 15th day of June, 2011, a true and correct copy of the foregoing Charging Party's Exceptions to Administrative Law Judge Decision was filed electronically with the National Labor Relations Board, and was served via email upon the following:

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